

Approved 2/6/08

**TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting
January 2, 2008**

Note: *These minutes were written from the audiotape only. No written information was provided.*

Board Present: Chairman Dan Remian, David Cobey, Bob Ellis, Evelyn Kalloch, Frank Muddle and CEO Scott Bickford

Absent: None

1. Call to Order: Chairman Remian called the meeting to order at 6:10 P.M.

2. Approve the Minutes: The chairman said the Board had just finally received the minutes of the 11/7/07 and 12/5/07 meetings.

ACTION: Mr. Ellis made a motion, seconded by Mr. Cobey, to hold off considering these minutes until the next meeting.
Carried 5-0-0

3. Correspondence: The chairman said the state had extended its deadline for revision of shoreland zone ordinances to July 2009. He also mentioned an email from Bonnie Miller, in which she alleged that there were inconsistencies in Mr. Tower's communications with the DEP in regard to the first item on tonight's agenda, etc. There was also a memo from Board member Cobey. None of these was read into the record.

4. James Tower, Shoreland Zone Use Permit Application, Map 5 Lots 85 & 86: Mr. Remian noted that the Board had gone through the review criteria for this application at its 12/5/07 meeting. He read aloud from the 11/7/07 minutes a unanimously approved motion that the parking area did not comply with the requirements of Section 15(B)(1) and the driveway did not comply with the requirements of Section 15(G)(2) of the Town of Cushing Shoreland Zone Ordinance [SZO]. Following this, the Board had approved a motion to table further discussion pending review by the Board of Appeals. Chairman Remian stated that the PB had to take some action on this application in order for the Board of Appeals [BOA] to handle it as a variance. He asked the Board to reconsider the motion to table this application.

Mr. Cobey presented a written motion he would prefer to see as the basis for a motion for reconsideration. Mr. Cobey said he understood the chairman to say the Board needed to reconsider the motion. Mr. Ellis said a decision was required and the motion to table should not have been passed. The chairman said that was correct. Mr. Muddle said the item should be removed from the table before any more discussion ensued.

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, to reconsider the tabling of Mr. Muddle's motion on November 7.
Carried 5-0-0

Mr. Tower objected that the PB should have simply removed the application from the table, rather than "reconsidering the tabling." Mr. Muddle agreed.

ACTION: Mr. Cobey made a motion, seconded by Mr. Muddle, to take it off the table.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Remian, to deny the application of Last Resort Holdings, LLC, dated August 1, 2007 and supplemented by an addendum dated October 26, 2007, for a land use permit and construction permit for recreational uses on Lots 85 and 86 of Map 5, including a driveway, parking lot [unintelligible] or a ramp [unintelligible] on the St. George River. Based on the Planning Board's finding that the locations of the road and driveway do not and cannot satisfy the requirements of the applicable 2001 Town of Cushing Shoreland Zone Ordinance, Sections 15(F)(1) and 15(G)(2) that parking areas and driveways respectively of structures must be set back 75' from the upland edge of the wetland and, recognizing that this denial must be forwarded to the Cushing Board of Appeals,

the Planning Board finds it necessary to deny the applicant's representation in correspondence to DEP (attached) that there has been a "recommendation for approval from the Cushing Planning Board" to the Cushing Board of Appeals because the Cushing Planning Board has made no such recommendation.

Mr. Cobey and Mr. Remian later withdrew the motion

Mr. Cobey stated that the Board had already determined by review that there were two items the application could not meet, which he felt were sufficient for the basis of denial. Mr. Ellis asked, as a matter of procedure, if the PB were not obligated to finish the criteria review before voting to deny the application. Mr. Muddle said if there were no variance then there would be no further progress on the application without some further answer; if there were a variance, the PB would go back and continue the review. He felt it would be a good idea to complete the review before voting on Mr. Cobey's motion in case there were further stumbling blocks. Mr. Ellis agreed this would be cleaner and the applicant would be fully informed as to problems. The Board concluded that it had ended review on Section 15(G)(2) of the SZO.

Mr. Tower stated that he believed his application was being reviewed under the latest 2007 version of the SZO, not the 2001 version stated in Mr. Cobey's pending motion. Secondly, the developer said his representation to the DEP in correspondence was based on statements made by the PB on the previous "go-round" to the Board of Appeals; he recollected that some members had said the Board should make a recommendation, though that was hearsay and should not be a part of this motion. Mr. Cobey interjected that writing a letter to DEP was not hearsay and that words spoken before a previous request to the BOA were not applicable to this action at this time. There was discussion of under what version of the regulations this review was being conducted. Mr. Tower asked when the SZO had been amended. Mr. Cobey replied it was February of 2007 and the Board determined that Mr. Tower was correct that the old 2001 SZO version was the relevant authority for this application.

Mr. Cobey said he thought his motion on the floor must be tabled before further review could commence. Mr. Tower suggested withdrawing it and starting over. The PB agreed that it was reviewing the 2/22/07 version of the application and review would begin with Section 15(B).

ACTION: Mr. Muddle made a motion, seconded by Mr. Remian, that the application did not meet the requirements of Section 15(B)(1) for the 75' setback requirement.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, that the remaining items in Section 15(B) did not apply to this application.
Carried 5-0-0

Mr. Ellis precipitated a discussion on jurisdiction (PB or CEO) over the removable pier and/or its permanent hinges on the shore. This culminated with the Board voting on the motion below.

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, that paragraph Section 15(C) did not apply to this application as there are no permanent structures projecting into or over water bodies.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, that Section 15(D & E) does not apply to this application.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that Section 15(F)(1) could not be satisfied by the application.
Motion and second withdrawn

ACTION: Mr. Cobey made a motion, seconded by Mr. Muddle, that the application does not meet the parking area setback requirements in Section 15(F)(1).
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Muddle, that the application does not meet the driveway setback requirements in Section 15(G)(2).
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Remian, that the application is not in conflict with the remaining requirements in Section 15(G).
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mr. Remian, that Section 15(H) does not apply.
Carried 5-0-0

ACTION: Mr. Remian made a motion, seconded by Mr. Muddle, that, based on the applicant's testimony, the application satisfies the requirements of Section 15(I).
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that Section 15(J, K, L, M and N) do not apply to this application.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Remian, based on the applicant's statements, that the area down slope of new construction will not be disturbed and that the application satisfies the requirements of Section 15(O).
Carried 5-0-0

Mr. Tower acknowledged that a written erosion and sedimentation control plan was not part of the application, though best management practices were. Mr. Cobey read from the application addendum (10/24/07) concerning enhancement of the view of the river resulting from any changes to vegetation, including removal of dead trees. Mr. Cobey then said he had not seen IF & W approval, as mentioned in the addendum; Mr. Tower said this was in the forthcoming DEP permit. Mr. Ellis noted that Mr. Cobey had been reading from the addendum to the "landing" application of 10/24/07. Mr. Cobey said there was no deed in the addendum and Mr. Tower replied that the application did not call for a deed. Mr. Ellis said he assumed the list of the General Criteria under Section 16(E)(3)(A through I) for Robbins Mountain Landing [unintelligible].

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that the application satisfies Section 15(P).
Carried 5-0-0

Mr. Cobey asked if there were other approvals in place for this project. There was one from the Army Corps of Engineers [ACE] dated 6/19/07. Mr. Tower said there was a later revised ACE permit, which Mr. Cobey ascertained was an NRPA permit for the wetlands.

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, that the application satisfies the requirements of Section 15(Q).
Carried 4-1-0 (Mr. Remian voted against)

Mr. Remian said he opposed the previous motion because he was not comfortable not knowing what the soils were in that area.

ACTION: Mr. Remian made a motion, seconded by Mr. Cobey, that 15(R), water quality, has been satisfied by the applicant's application.
Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, that the application satisfies the requirements of Section 15(S).
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mr. Cobey, that Section 15(T) does not apply; it's not an access corridor.
Carried 5-0-0

Mr. Ellis asked if, before going onto Section 16, he could read a paragraph about non-conforming lots to see if members felt it applied. He read from Section 12 of the SZO and said this referred to the non-conforming conditions of the lot size. He then read aloud Section 12(E)(1). Mr. Muddle said the provision of the ordinance was the

setback, which was the stumbling block. Mr. Ellis then read from the same section again, "...that all provisions of the ordinance except lot size and frontage can be met." He said it was the lot size that prohibited the applicant from meeting the setback and the lot could be built upon without a variance under that condition. Mr. Muddle said he still felt it did not meet the provisions of the ordinance that had setback requirements and the applicant needed a variance for that reason. Mr. Tower agreed with Mr. Muddle, adding that if the lot had no wetlands (and wetland setback lines) he would agree with Mr. Ellis.

Mr. Cobey said the Board had not dealt with 15(A), Land Use Standards at this meeting.

ACTION: Mr. Ellis made a motion, seconded by Mr. Remian/ Mr. Muddle, that the application cannot comply with Section 15(A), Lot Standards for Public and Private Recreational Facilities for both lot size and frontage. Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mr. Muddle, that the applicant has provided information to make a positive finding of fact on Section 16(E)(3)(A through H) based on the submittal. Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis/Mrs. Kalloch, that the application is not in conformance with paragraphs of Sections 15 (A)(1), (B)(1), (F)(1) and (G)(2). Carried 5-0-0

Mr. Ellis said he could find no specific instructions in the regulations for denying an application. Mr. Cobey said he would like to resurrect his withdrawn earlier motion, with modifications. He stated that his first modification would be to add Sections 15(A)(1), 15(B)(1) and 15(F)(1). Mr. Tower said he would like to have the motion constructed here and suggested it deal with the simple facts. There was further discussion about the details of the motion.

ACTION: Mr. Cobey made a motion, seconded by Mr. Muddle, to deny the application of Last Resort Holdings dated August 1, 2007 and supplemented by an addendum dated October 26, 2007, for a land use permit and a construction permit for recreational uses on Lots 85 and 86 of Map 5, including a driveway, parking lot [unintelligible] or a ramp and float on the St. George River, based on Board's decision that the application does not meet the requirements of the Shoreland Zoning Ordinance, Sections 15(A)(1), (B)(1), (F)(1), (G)(2) and Section 16(E)(3)(i). Carried 5-0-0

ACTION: Mr. Cobey made a motion, seconded by Mr. Remian, that the substance of the third paragraph be contained in a transmittal letter to the Board of Appeals, transmitting this denial, by the Planning Board chair. Carried 5-0-0

Mr. Tower questioned the meaning of that motion. Mr. Muddle said he was uncomfortable with the PB communicating directly with the BOA because it should hear this case from a blank slate. Mr. Cobey countered that it would not be a blank slate because the BOA would have a piece of disinformation. Mr. Ellis said the PB needed to brush up on its responsibility before a BOA action. Mr. Muddle said the reference to PB recommendation of a BOA approval of a variance had nothing to do with the issues in this review, but rather with another issue that came up last September. Chet Knowles, secretary to the BOA, said from the audience that the PB should be reminded that the BOA would make its decision strictly on information presented during the BOA meeting. The chairman asked the CEO to handle the written denial to the applicant and all accompanying information to the BOA. Mr. Ellis said he felt this was not the correct way to handle a PB decision and the chairman said he would do it. Mr. Tower thanked the Board for its very careful deliberations.

5. Continuation of Application for the Robbins Mountain Subdivision; Presented by James Tower, Map 5, Lots 83 & 84: The chairman said this application had been tabled until DEP approval. Mr. Tower said he had submitted an amendment for additional lots. Mr. Remian told the applicant he couldn't amend an unapproved subdivision. There was discussion. Mr. Bickford said adding new lots to an application would make it a new subdivision, which would come under the new subdivision rules. A separate amendment after the 6-lot subdivision was approved would be reviewed under the new rules. Mr. Tower said that during this application process, in order to satisfy the storm water management rules, the Board had allowed interior lot lines to be shuffled substantially and the road to be moved. He asked where the regulations said that one or more lots could not be added as a revision to a plan. Mr. Ellis said this revision did not apply to any of the information received, starting with acreage.

Mr. Tower suggested that it would be a serious problem to have a subdivision reviewed under one set of rules and an amendment reviewed under another. Mr. Tower said he saw no prohibition against revising the plan, noting that the landing had been removed from the plan during the review. There was prolonged discussion of these disparate views and how best to move forward. During this discussion Mr. Tower stated that he would appeal any decision the Board made that he felt was not founded in the rules.

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, that because of the substantial nature of the changes being proposed, we require a re-submittal under the new regulations.
Withdrawn by Mr. Cobey

ACTION: Mr. Cobey made a motion, seconded by Mr. Remian, that what was proposed to be added here is not an amendment.
Carried 4-0-1 (Mr. Muddle abstained)

The discussion continued.

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Cobey, to get a legal opinion from MMA and our attorney before we accept this amendment.
Carried 5-0-0

Mr. Ellis wanted to ask MMA if there was any threshold for the obligation to inform abutters, even if the same as before the amendment, since the application would be substantially changed. Mr. Tower said he had no problem re-notifying abutters. Mr. Ellis asked the chairman to inform MMA that the applicant had stated that he would be providing additional information for the amendment or revision; the developer's letter should not be regarded as the only submission. The chairman received permission from the other members to obtain an opinion from the PB attorney also, if allowed to do so.

6. Amendment Application to Matson Heights Subdivision for a Lot Line Change, Presented by John Black, Map 1, Lot 4-A: Mr. Black had copies of the revisions of 1992 and 1995 to the Matson Heights Subdivision. Mr. Black said LaChance (?) wanted to buy and Corbett (owner of Lot 3) was willing to sell, the small piece depicted on the plan in the northeast corner of the subdivision. The amount of land to change hands was approximately 5,000 Sq. Ft.

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, to approve the amendment.
No vote was called

Mr. Cobey asked if there had been comments from abutters. CEO Bickford said two abutters had come in and, after having the plans explained to them, had no comments. Mr. Ellis asked how close the [unintelligible] building was to the lot line. Mr. Black said they were approximately 80' apart. Mr. Cobey rattled off the standards that would not be applicable. Mr. Black said monuments had been installed.

ACTION: Mr. Ellis made a motion, seconded by Mr. Cobey, that A through L do not apply.
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mr. Cobey, for a positive finding of fact on M.
Carried 5-0-0

ACTION: Mr. Remian made a motion, seconded by Mr. Cobey, that N, O, P and Q do not apply.
Carried 5-0-0

ACTION: Mr. Ellis made a motion, seconded by Mr. Cobey, to remove E from his not applicable list.
No vote was called

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, that the lot standards have been met and the application should be approved.
Carried 5-0-0

7. Adjournment:

ACTION: Mr. Muddle made a motion, seconded by Mrs. Kalloch, to adjourn at 8:58 P.M.
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey
Recording Secretary

Addendum

Though these minutes were approved on 2/6/08, at the 3/5/08 meeting the Board voted to add the following statement, made by Mr. Muddle (but missing from the minutes) regarding the Robbins Mountain Subdivision:

“In the ultimate review of this application there was a line dispute on the border area on the north side of this project with the abutter and without that being resolved it left a question in the Board’s mind as to recognizing the ownership of the property being developed and could be a deficit to the approval, or at least the conditions, and urged that that be resolved before any final action so that that wouldn’t upset the go-ahead with approval.”